



DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR Part 199

[DOD-2014-HA-0133]

RIN 0720-AB62

TRICARE; Revision of Nonparticipating Providers Reimbursement Rate; Removal of Cost Share for Dental Sealants; TRICARE Dental Program.

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes several amendments to the TRICARE Dental Program (TDP) regulation. Specifically, this proposed rule revises the benefit payment provision for nonparticipating providers to more closely mirror industry practices by requiring TDP nonparticipating providers to be reimbursed (minus the appropriate cost-share) at the lesser of billed charges; or the network maximum allowable charge for similar services in that same locality (region) or state. This rule also updates the regulatory provisions regarding dental sealants to clearly categorize them as a preventive service and, consequently, eliminate the current 20 percent cost-share applicable to sealants to conform the language in the regulation to the statute.

DATES: Written comments received at the address indicated below by [Insert 60 days from the date of publication in the *Federal Register*] will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the

instructions for submitting comments.

- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Col Gary C. Martin, Defense Health Agency, telephone (703) 681-0039.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

1. Purpose of Regulatory Actions

a. Need for Regulatory Actions

(1) Revision of Nonparticipating Providers' Reimbursement Rate

Prior to 2006, TRICARE Dental Program (TDP) participating and nonparticipating providers were reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. This provision was included in the regulation to constitute a significant financial incentive for participation of providers in the contractor's network and to ensure a network of quality providers through use of a higher reimbursement rate. Over time, the Department discovered that this provision placed an unnecessary burden on contractors with already established, high quality provider networks with

reimbursement rates below the 50th percentile that were of sufficient size to meet the access requirements of the TDP. Consequently, the Department of Defense published a final rule in the Federal Register on January 11, 2006 (71 FR 1695), revising the participating provider's reimbursement rate for the TDP that has resulted in significant cost savings to the TDP enrollees and the Government. Since over 80 percent of all TDP care was provided by network dentists, the need to also change the reimbursement rate for nonparticipating dentists was overlooked and not included in the 2006 rule change. However, over the past eight years this has created an incentive for some network providers to leave the TDP network and for other providers not to become network providers. As the rule is currently written, depending on the geographic location, some non-network providers are actually reimbursed at a higher amount than they would have been had they been a participating provider and receiving the negotiated network rate. Specifically, the revision will require TDP nonparticipating providers to be reimbursed (minus the appropriate cost-share) at the lesser of (1) billed charges; or (2) the network maximum allowable charge for similar services in that same locality (region) or state. This revision will increase the number of network providers and provide cost savings to enrollees and the Government.

(2) Removal of Cost-share for Dental Sealants

Sealants are currently separately defined in the TDP regulation at § 199.13(b)(24), and specifically identified as a covered non-preventive service subject to a 20 percent cost-share. The cost share for dental sealants was originally put in place when there was minimal evidence as to the effectiveness of dental sealants preventing tooth decay. The scientific evidence is now overwhelming that dental sealants are effective in preventing tooth decay and the vast majority of commercial dental insurance plans cover this procedure with no cost shares. Further, the

American Dental Association's Council on Dental Care Programs Code on Dental Procedures and Nomenclature classifies dental sealants as a preventive procedure. Additionally, the Department currently recognizes sealants as a preventive service under the TRICARE Retiree Dental Program per § 199.22(f)(1)(ii)(C). The proposed regulatory revisions regarding dental sealants will delete the separate definition of dental sealants, specifically include sealants as a category of preventive service under § 199.13(e)(2)(i)(B), delete any possible inconsistency in the definition of preventive service in § 199.13(b)(20) and (e)(2)(i), and update the cost-share table in § 199.13(e)(3)(i) to delete the specific line item reference to sealants being subject to a 20 percent cost-share in order to conform with the requirement in 10 U.S.C. 1076a(e)(1)(A) that TDP enrollees pay no charge for preventive services.

b. Legal Authority for the Regulatory Action

This regulation is proposed under the authority of 10 U.S.C. 1076a which authorizes the Secretary of Defense to establish a voluntary enrollment dental plan for eligible dependents of members of the uniformed services who are on active duty for a period of more than 30 days, members of the Selected Reserve of the Ready Reserve, members of the Individual Ready Reserve, and eligible dependents of members of the Ready Reserve of the reserve components who are not on active duty for more than 30 days.

2. Summary of Major Provisions of the Regulatory Action

In this rule, the proposed regulatory language changes nonparticipating provider (e.g. non-network or out-of-network) reimbursement at § 199.13(g)(2)(i) to be on an equivalent basis with network reimbursement, in order to serve as an incentive for both providers to participate in the network and for beneficiaries to utilize network providers in order to avoid additional out-of-pocket costs for balance billing. The proposed rule includes several technical revisions for

clarification and consistency sake in defining beneficiary liability, nonparticipating provider and participating provider in the context of the TDP. The proposed rule also amends several provisions within § 199.13 to eliminate the separate definition of sealants, specifically include sealants as a covered preventive service, and remove beneficiary cost sharing by covering sealants at 100 percent of allowable charge as authorized by law.

3. Summary of the Costs and Benefits

This proposed rule is not anticipated to have an annual effect on the economy of \$100 million or more, making it not economically significant and non-major under the Executive Order and the Congressional Review Act. The proposed amendment to transition nonparticipating provider reimbursement to be on an equivalent basis with network reimbursement, will result in (1) a lower allowed-to-billed ratio and a decrease in TDP claim payments, (2) premium decreases for beneficiaries; (3) a corresponding increase in enrollment by eligible beneficiaries as a result of these premium changes; (4) resultant cost savings to the government through reduced premium subsidies; and (5) increased out-of-pocket costs for beneficiaries who opt to use a nonparticipating provider who may balance bill for the difference in contractor payment at the current rates and the new, lower network agreement rates. While the requirements for sealant coverage will not change, the removal of beneficiary cost sharing for sealants will result in (1) a marginal increase in sealant utilization, as we anticipate most beneficiaries requiring sealants are currently receiving these services since they remain a relatively inexpensive procedure and are typically viewed as beneficial; (2) a minimal premium increase for beneficiaries; and (3) an increase in government costs as a result of both the direct effect of the waived cost sharing on current sealant services and the full cost of the additional utilization. We estimate that the net effects of the TDP provisions that would be implemented by this rule would result in a net

premium decrease for TDP beneficiaries and corresponding cost savings to the government that do not reach the \$100 million threshold to be deemed economically significant.

II. Background

The TRICARE Dental Program (TDP) allows the Secretary of Defense to offer comprehensive premium based indemnity dental insurance coverage to qualified individuals. The funds used by the TDP are appropriated funds furnished by Congress through annual appropriation acts and funds collected as premium shares from beneficiaries. TDP is delivered through a competitively procured contract awarded by the Director, Defense Health Agency, or designee. TDP enrollees are required to pay all or a portion of the premium cost depending on their status. For those eligible for premium sharing, including active duty dependents and certain Selected Reserve and Individual Reserve members, the portion of premium share to be paid by them is no more than forty (40) percent of the total premium. For those entitled to premium sharing, the Government pays the remaining sixty (60) percent of the premium. Additional information regarding the TDP is available at www.tricare.mil/tdp.

The amendments to § 199.13 are being proposed with the understanding that the changes are being considered for incorporation into the next TDP contract. As such, the implementation date for any changes adopted through this rulemaking process is expected to be effective with the start health care delivery date (on or after February 1, 2017) of the next awarded TDP contract.

III. Explanation for Proposed Provisions

A. Revision of Nonparticipating Providers Reimbursement Rate

Currently, § 199.13(g)(2)(i) requires the TRICARE Dental Program (TDP) contractor to reimburse nonparticipating providers at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the

provider's actual charge, whichever is lower, less any cost-share amount due for authorized services. The Department of Defense published a final rule in the Federal Register on January 11, 2006 (71 FR 1695), revising the participating provider's reimbursement rate for the TDP that has resulted in significant cost savings to the TDP enrollees and the Government. The reimbursement rates that have been negotiated over the life of the dental contract represent the general market rates for dental insurance reimbursement. Since over 80 percent of all TDP care was provided by network dentists, the need to also change the reimbursement rate for nonparticipating dentists was overlooked at that time and not included in the 2006 rule change. However, over the past eight years this has created an incentive for some network providers to leave the TDP network and for other providers not to become network providers. While the contractor's negotiated rates for network providers are proprietary in nature and vary quite a bit based on geographic location, an examination of the allowed to billed ratio for network versus non-network care demonstrates that the TDP contractor's network delivers considerably lower rates for network care. The revision will require TDP nonparticipating providers to be reimbursed (minus the appropriate cost-share) at the lesser of (1) billed charges; or (2) network maximum allowable charge for similar services in that same locality (region) or state. The network maximum allowable charge is the maximum negotiated fee between the dental contractor and any TDP participating provider for similar services covered by the dental plan in that same locality (region) or state. This reimbursement change would only apply to areas where the network is compliant; there is no proposed change to the exception in § 199.13(g)(2)(i) for non-compliant areas subject to the requirements in § 199.13(e)(3)(ii). We believe this revision is consistent with current industry practice and will bring DoD's TDP reimbursement provisions into line with the broader insurance market, but invite comments on any alternative approaches

to better aligning TDP nonparticipating provider reimbursement rates with network negotiated rates and current industry practice. Elimination of the 50th percentile of prevailing charges requirement affords the Government and enrollees significant cost savings through lower provider reimbursement costs by the contractor. These cost savings are passed on in the form of lower premiums for all enrolled beneficiaries. The Department also anticipates the proposed change will increase the number of network providers.

Under this proposed rule, enrollees maintain freedom of choice to see either a participating or nonparticipating provider. Cost shares are established by statute and do not vary between network and non-network care. Beneficiaries will, however, be incentivized to seek care from a participating provider who has agreed to not balance bill the beneficiary any amount in excess of the maximum payment allowed by the dental plan contractor for covered services. For those beneficiaries that elect to seek care from a nonparticipating provider, they may be balance-billed amounts in excess of the dental plan contractor's network maximum allowable charge. As with other commercial dental plans, TDP enrollees and nonparticipating dentists can call the TDP contractor's toll free customer service to inquire as to what the network maximum allowable charge is for their service in a specific locality (region) or state.

This proposed rule also makes several technical amendments to § 199.13(b) and (f) for clarification and consistency sake in defining and discussing beneficiary liability, nonparticipating provider and participating provider in the context of the TDP. With the proposed revision to nonparticipating providers' reimbursement rate, the definition of beneficiary liability that discusses the prevailing fee determination must be revised to reference the network maximum allowable charge. Additionally, revisions are required to clarify that participating providers are participating in the contractor's network as a network provider and

are reimbursed in accordance with the contractor's network agreements. Nonparticipating providers are considered non-network, or out-of-network, providers.

B. Removal of Cost-share for Dental Sealants

The cost share for dental sealants was originally put in place when there was minimal evidence as to the effectiveness of dental sealants preventing tooth decay. The scientific evidence is now overwhelming that dental sealants are effective in preventing tooth decay and the vast majority of commercial dental insurance plans cover this procedure with no cost shares. Further, the American Dental Association's Council on Dental Care Programs Code on Dental Procedures and Nomenclature, recognizes dental sealants as a preventive service. Consequently, the Department believes dental sealants should be reclassified as a preventive service under the TDP. In order to do so, this rule proposes to eliminate the separate definition of sealants found at § 199.13(b)(24) in favor of including it as a category of preventive service under § 199.13(e)(2)(i)(B). Finally, as a result of clearly classifying dental sealants as a preventive service, the proposed rule eliminates the current 20 percent cost-share to conform with the requirement in 10 U.S.C. 1076a(e)(1)(A) that TDP enrollees pay no charge for preventive services. As the cost share has prevented some beneficiaries from receiving this needed treatment, we also anticipate the oral health of TDP beneficiaries will improve with the elimination of this cost-share.

IV. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and E.O. 13563, "Improving Regulation and Regulatory Review"

It has been determined that his proposed rule is not a significant regulatory action. This rule does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; completion; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Orders.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been determined that this proposed rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this proposed rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Set forth in this proposed rule are minor revisions to the existing regulation. The DoD does not anticipate a significant impact on the Program.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Act of 1995.

Executive Order 13132, Federalism

It has been determined that this proposed rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Dental sealants, Military personnel.

Accordingly, 32 CFR Part 199 is proposed to be amended as follows:

PART 199 – [AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.13 is proposed to be amended by:

- a. Revising paragraphs (b)(4), (14), (17) and (20).
- b. Removing paragraph (b)(24).
- c. Revising paragraph (e)(2)(i).
- d. Adding new paragraph (e)(2)(i)(B)(5).
- e. Revising the table following paragraph (e)(3)(i) to delete the fourth line item entry entitled “Sealants.”
- f. Revising paragraphs (f)(5) and (g)(2)(i).

The revisions and additions read as follows:

§199.13 TRICARE Dental Program.

* * * * *

(b) * * *

(4) Beneficiary liability. The legal obligation of the beneficiary, his or her estate, or responsible family member to pay for the costs of dental care or treatment received. Specifically, for the purposes of services and supplies covered by the TDP, beneficiary liability including cost-sharing amounts or any amount above the network maximum allowable charge where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. In cases where a nonparticipating provider does not accept assignment of benefits,

* * * * *

(14) Nonparticipating provider. A dentist or dental hygienist that furnished dental services to a TDP beneficiary, but who has not agreed to participate in the contractor's network and accept reimbursement in accordance with the contractor's network agreement. A nonparticipating provider looks to the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the dental plan contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member, not the provider.

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(17) Participating provider. A dentist or dental hygienist who has agreed to participate in the contractor's network and accept reimbursement in accordance with the contractor's network agreement as the total charge (even though less than the actual billed amount), including

provision for payment to the provider by the beneficiary (or active duty, Selected Reserve or Individual Ready Reserve member) or any cost-share for covered services.

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(20) Preventive services. Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth, as well as other dental services authorized in paragraph (e) of this section.

* * * * *

(e) * * *

(2) * * *

(i) Diagnostic and preventive services. Benefits may be extended for those dental services described as oral examination, diagnostic, and preventive services when performed directly by dentists and dental hygienists as authorized under paragraph (f) of this section. These include the following categories of service:

* * * * *

(B) * * *

(5) Sealants.

* * * * *

(f) * * *

(5) Participating provider. An authorized provider may elect to participate as a network provider in the dental plan contractor's network and any such election will apply to all TDP beneficiaries. The authorized provider may not participate on a claim-by-claim basis. The participating provide must agree to accept, within one (1) day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is

based on the methodology specified in paragraph (g)(2)(ii) of this section. The fee or charge determinations are binding upon the provider in accordance with the dental plan contractor's procedures for participation in the network. Payment is made directly to the participating provider, and the participating provider may only charge the beneficiary the applicable percent cost-share of the dental plan contractor's allowable charge for those benefit categories as specified in paragraph (e) of this section, in addition to the full charges for any services not authorized as benefits.

* * * * *

(g) * * *

(2) * * *

(i) Nonparticipating providers (or the Beneficiaries or active duty, Selected Reserve or Individual Ready Reserve members for unassigned claims) shall be reimbursed at the lesser of (1) the provider's actual charge: or (2) the network maximum allowable charge for similar services for that same locality (region) or state, whichever is lower, subject to the exception listed in paragraph (e)(3)(ii) of this section, less any cost-share amount due for authorized services. The network maximum allowable charge is the maximum negotiated fee between the dental contractor and any TDP participating provider for similar services covered by the dental plan in that same locality (region) or state.

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Dated: December 22, 2014.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.

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